

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

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|---------------------|---|--|
| LEMUEL C. MCCULLUM, |) | |
| |) | |
| Plaintiff, |) | |
| |) | Civil Action No. 1:19-cv-0705 |
| v. |) | |
| |) | Formerly Case No. GV19006703-00 |
| MARK KAPPELMANN, |) | Prince William County General District |
| JOHN REDMOND, & |) | Court, Manassas, Virginia |
| DALE WALTERS |) | |
| |) | |
| Defendants. |) | |

NOTICE OF REMOVAL

PLEASE TAKE NOTICE that on May 31, 2019, the United States of America, on behalf of defendants Mark Kappelmann, John Redmond, and Dale Waters, filed in the Office of the Clerk of the United States District Court for the Eastern District of Virginia, Alexandria Division, this Notice of Removal of the above-styled action to the said United States District Court.

The United States respectfully represents as follows:

1. *Pro se* Plaintiff, Lemuel C. McCullum, originally commenced this action in the Prince William County General District Court, in an action styled *McCullum, Lemuel v. Kappelmann, Mark et al.*, Case No. GV19006703-00.
2. A copy of the warrant in debt is attached hereto. *See* Defendant's Exhibit ("DEX") 1. In the warrant in debt, Plaintiff is seeking monetary relief in the amount of \$25,000 for lost wages and defamation, \$168.00 for costs, and \$2,500 for attorney's fees. *Id.*
3. Defendants, Mark Kappelmann, John Redmond, and Dale Walters, have been served with the warrant in debt.

4. Mark Kappelmann, John Redmond, and Dale Walters are employed by the U.S. Army Aviation Brigade, Department of the Army. Defendants are being sued by Plaintiff for actions they took or failed to take while acting within the scope of their office or employment.

5. Pursuant to 28 U.S.C. § 2679(b)(1), the exclusive remedy (with exceptions not relevant here) for the allegedly tortious acts of a federal employee taken within the scope of his office or employment is a suit against the United States brought under the Federal Tort Claims Act (“FTCA”). The tort that Plaintiff alleges in his warrant of debt—defamation—falls within this provision.

6. Pursuant to 28 U.S.C. § 2679(d)(2), upon certification by the Attorney General or his designee that an individual defendant acted within the scope of his federal employment at the time of the incident giving rise to a civil action in a state court, the civil action pending against the employee in the state court is deemed to be against the United States under the FTCA; the United States is substituted by operation of law as the defendant with respect to any state law claims; and the action shall be removed without bond to the United States District Court that embraces the place in which the state court action is pending.

7. Pursuant to his delegated authority, 28 C.F.R. § 15.4, the United States Attorney has certified that Defendants Mark Kappelmann, John Redmond, and Dale Walters were acting within the scope of their federal office or employment at the time of the incident(s) alleged in Plaintiff’s warrant in debt. Such certification has been filed along with this Notice. *See DEX 2.*

8. Additionally, pursuant to 28 U.S.C. § 1442a, a civil action in a “court of a State. . . against a member of the armed forces. . . on account of an act done under color of office or status, or in respect to which he claims any right, title, or authority under a law of the United States respecting the armed forces, . . . may at any time before the trial or final hearing be

removed. . .” Plaintiff’s Warrant in Debt also clearly concedes that “Mr. Kappelmann is an active duty member of the U.S. Army who currently serves as the Army Aviation Brigade, Commander.” *See DEX 1.*

9. No trial has yet begun in this action, and the United States District Court for the Eastern District of Virginia embraces the place in which the state court action is pending.

10. A copy of this Notice is being filed with the Clerk of the Prince William County General District Court, Fairfax, Virginia.

For the foregoing reasons, the pending state court action shall be removed without bond from the Prince William County General District Court to the United States District Court for the Eastern District of Virginia.

Dated: May 31, 2019

Respectfully submitted,

G. ZACHARY TERWILLIGER
UNITED STATES ATTORNEY

By:

/s/

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ATTORNEYS FOR THE UNITED STATES

CERTIFICATE OF SERVICE

I hereby certify that on May 31, 2019, I will serve a true copy of the foregoing via first-class United States mail to the following:

Lemuel C. McCullum
15035 Barnes Meadow Court
Woodbridge, VA 22193

PRO SE

_____/s/_____
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